

## **AB 3632 Transition ACHSA Questions for DMH**

### **A. Client Referral Flow During the Transition**

If DMH stops taking/processing AB3632 referrals, what is to be done about new students needing these services? Many agencies are sitting with funding in their contracts and everyone has been told that there's plenty of AB100 money available for these services for this fiscal year, but agencies will not be able to provide those services and capture all of this funding in their contracts if referrals cease. Is there a mechanism for schools to refer directly to DMH contracted agencies? What is that mechanism? Do school districts know of it?

**DMH Response:** The only mechanism is for school districts to contract directly with NGAs. All districts are aware of this imperative, but not all districts have indicated their intent to enter into contracts. Many, including LAUSD, plan to deliver assessment and ERMHS with their own school district staff. Santa Clarita SELPA is doing an RFP, which is due in February, to be implemented in March 2012. Other districts have not disclosed what their plans are for the remainder of FY 2011-2012 and for FY 2012-2013. During FY 2011-2012, the only way school districts can access services and AB100 funds for services is by utilizing our existing network of DMH providers. Those districts that chose to deliver services themselves prior to July 1, 2012, must utilize school district funds and resources.

### **B. Funding and Continuity of Care/Transition**

Although funding for clients has been promised through the end of the fiscal year, providers are very concerned about continuity of care for these clients after June 30, 2012, particularly for cases referred well into the fiscal year. If providers are not contracted by school districts to continue providing services for these students, will DMH pay for their services past June 30, 2012? If not, how can providers be expected to ensure continuity of care to these clients without funding, or alternatively transition these cases when the funding ends?

**DMH Response:** No, DMH cannot pay for services beyond June 30, 2012, when the AB 100 funds expire. Any unspent funds must be returned to the State to be reallocated to those counties that over spend their allocation of AB 100 dollars. Clients that are eligible for services through other funded programs such as EPSDT/MediCal, Healthy Families, or any of the MHSA programs, may continue to receive mental health services, independent of the IEP, "to the extent resources are available". While DMH advocates for appropriate transition and continuity of care for all clients, school districts are not obligated by statute, regulation, or by the MOU to do any transition planning or to assure continuity of care. Their only obligation is to ensure that by July 1, 2012, they will have an IEP in place for

every student that includes services designed to meet each student's educational needs, consistent with Federal and state education law.

### **C. Billing to DMH Contract**

Has DMH set or discussed policies related to contract agencies that may enter into contracts directly with the schools to provide IEP mandated mental health services? For example, if a child is eligible for Medi-Cal, will there be a mechanism for the contract agency to bill those IEP mandated services to the DMH contract if the school districts provide the match?

#### **DMH Response:**

There have been discussions locally, as well as in the AB 114 Workgroup convened by California Department of Education, about the possibility of school districts being able to access MediCa/EPSTD by providing the local county match with school district funds. School districts are ambivalent about this, and want specific detailed trainings and information about the risks and benefits of either becoming a MediCal certified provider of services, or contracting for "medically necessary" mental health services, which they feel may not be "educationally necessary". There is no requirement in IDEA or in California Education Code that school districts provide "medically necessary" services on any student's IEP.

### **D. Medication Support Services**

AB3632 funding is to remain in agency contracts for this fiscal year as a transition. However, districts are holding IEP meetings and changing the services authorized, which may include removing medication support from the IEP so that it is no longer an authorized service.

- a) This has serious implications for AB3632 clients who are not covered by Healthy Families or Medi-Cal, whose access to medication will seemingly end abruptly. Can these clients be transferred for medication support services to FCCS CGF? Elsewhere?
- b) If a child has an IEP meeting and medication services are removed from the IEP, can/should the agency transfer their medication services to another DMH funding source for which they not be eligible (e.g., Medi-Cal or Healthy Families coverage)?

**DMH Response:** The position the school districts are taking is that "medication support" is NOT an IEP related service under IDEA and state education code, and that such services fall under the "medical exclusion" determination established by federal case law. This is an issue of great controversy statewide, and school districts anticipate litigation to resolve it. Clients who need ongoing medication support services may access them through their private insurance carrier. Absent private insurance, medication services may

be accessed through DMH and our network of providers, if clients are eligible for any of the other funded programs such as MHSA. CGF may be used for indigent care. Transition should be initiated early in 2012 by discussing this with parent/guardians so they have ample time to seek alternatives, if needed.

#### **E. Rates for Services**

Can you please notify the SELPAs/school districts that providers cannot legally enter into contracts with school districts to provide services at a rate lower than their Medi-Cal rate?

**DMH Response:** School districts have been told repeatedly, both here in Los Angeles and in the AB 114 Workgroup by CMHDA representatives, of the reasons why providers cannot enter into contracts with school districts to provide services at a rate lower than their MediCal rate, yet some districts continue to try to bargain. This may explain, in part, why so many districts are opting to deliver services with their own district staff, instead of contracting with our NGAs

#### **F. IEPs**

1. Providers have no longer been invited by schools to attend IEP meetings. Clinicians have also been turned away from IEP meetings when they have been invited by families to attend. What does DMH recommend providers do if they are not invited to or turned away from IEP meetings?
2. If agencies use educational language only on the IEPs (as some SELPAs are insisting upon) and if agencies use mental health language in their client records, will LACDMH and the Auditor-Controller have any problem with that for these former AB3632 clients for this fiscal year? DMH had mentioned that there should not be a problem if agencies use a “crosswalk” document. Since this document cannot be placed in or on the IEP, where should it be placed as far as LACDMH or the Auditor-Controller auditor are concerned?
3. Can DMH assist agencies in working with the SELPAs/school districts and legal advocates to develop appropriate IEP language?

**DMH Response:** Parents may bring anyone they want to attend IEP meetings, but they may be required to give districts advance notice if they are bringing an advocate or attorney. However, neither DMH nor its NGA contractors have any legal standing in the IEP team. Any recommendations provided to the IEP team are “advisory only”, and the IEP team may accept all, some, or none of the recommendations for services. For any potential future audit purposes, I suggest posting the “crosswalk” in the Policy and Procedure Manual at each clinic. The language specified on each student IEP is determined at the sole discretion of the

school districts. If there are disputes about eligibility or provision of services in the IEP, it is the school district that solely must justify and defend the determination of eligibility and the specific services offered to meet the student's educational needs.

#### **G. General/Other**

1. Is DMH talking with SELPAs regarding contracting with school districts to provide Wraparound services as an alternative to residential care? If so, Wraparound agencies should be a part of those discussions.
2. For how long will each of the four sources of AB114 funding be required to be dedicated to: a) special education in general; and b) special education mental health services?
3. If a fair hearing is filed close to or after June 30<sup>th</sup>, is there an obligation on the part of the school districts to pay the provider "aid paid pending" during the stay put period? How and when would the provider be paid for "aid paid pending"?
4. For agencies with questions regarding their current AB3632 clients and their IEP status would you please provide a list of contact persons for each of the County school districts?

**DMH Response:** (1) On December 9, 2011, Michael Rauso, Division Chief of DCFS, made a presentation to all LA County SELPA Directors about the Wraparound program. The districts may or may not pursue contracting with Wrap agencies, and it is yet to be determined what their level of interest may be. (2) The AB 114 funds for services, including those dedicated to special education students, are "one time only" funds to be utilized exclusively in FY 2011-2012. (3) In accordance with IDEA for Dispute Resolution, all services and payment for services must continue unchanged until the dispute is resolved by either a mediated settlement agreement between the parties or a by a hearing decision of an Administrative Law Judge. Reimbursement of costs incurred during the period of time of the dispute would be a part of the mediated agreement or in the hearing decision. Disputes are resolved within 90 to 120 days of the filing of the complaint. (4) There is no established list of contacts for each school district, as the responsibility for scheduling and coordinating IEP meetings is spread among a multitude of school district staff. The only comprehensive resource is the "2012 Public School Directory" which may be obtained from Los Angeles County Office of Education.. Paul McIver will provide ACHSA with 10 copies from the allocation received recently from LACOE.